

**STANDARDS OF
APPELLATE
REVIEW
IN CALIFORNIA**

Standards of Appellate Review in California

I. Overview

A. Principal Standards of Appellate Review: The three principal standards of review provide the appellate court with a lens with which to examine reviewable claims of prejudicial error presented on an adequate record. The standards of review indicate the degree of deference the appellate court will give to the trial court's determination.

1. Substantial evidence.
2. Abuse of discretion.
3. Independent judgment: "de novo" review.

B. Special Circumstances: Two frequently encountered situations, while not calling for special "standards" of review, require the appellate court to adopt slightly different postures toward the record.

1. *Wende* review.
2. Review of trial court decisions under Code of Civil Procedure, section 1094.5.

C. Reversible Error: The standards of review address the initial question: Did error occur in the trial court? In both civil and criminal cases, however, any error must have prejudiced the appellant before an appellate court will reverse. In effect, "prejudice" functions as a super standard of review.

D. References:

1. 9 Witkin, Cal. Procedure (3d ed. 1985 & supp. 1992) sections 241-366; 6 Witkin and Epstein, California Criminal Law (2d ed. 1989 & supp. 1992) sections 3203-3311.
2. 1 Eisenberg, Horvitz, Wiener, California Practice Guide: Civil Appeals & Writs (rev. ed. 1992), chapter 8.
3. California Continuing Education of the Bar, Cal. Civil Appellate

Practice (2d ed. 1985 & supp. 1992), chapter 4; Appeals and Writs
in
Criminal Cases (1982 & supp. 1992).

II. Substantial Evidence

A. Introduction:

1. Used to review the trier of fact's resolution of disputed fact questions. Under this standard, the appellate court will defer to the fact trier's determination, so long as substantial evidence supports that conclusion. Applies in both civil and criminal cases. (*People v. Jackson* (1992) 10 Cal.App.4th 13 [4th Dist.].) Deference to the fact trier's determination, if supported by substantial evidence, will prevail, even if substantial evidence also supports the appellant's position. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874 [1st Dist.].)
2. This standard entails considerable deference to the trial court's decision. (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831 [3d Dist.].) This rule does not concern whether there is substantial conflict in the evidence but, rather, whether the record as a whole demonstrates substantial evidence in support of the appealed judgment or order. (See, e.g., *Bowers v. Bernards*, *supra*, 150 Cal.App.3d at pp. 872-873 [1st Dist.].)
3. The standard applies to the resolution of any factual dispute, whether it arises at trial or otherwise. For example, in an appeal from a judgment entered pursuant to Code of Civil Procedure, section 664.6, challenging the trial court's interpretation of the terms of a settlement, if conflicting extrinsic evidence was presented at the trial court, the substantial evidence standard applies. (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561 [1st Dist.].) (If, however, the parties presented no conflicting extrinsic evidence below, the appellate court uses its independent judgment to review the settlement.)
4. It applies to both jury and non-jury trials. (*Alderson v. Alderson* (1986) 180 Cal.App.3d 450, 465 [1st Dist.].)
5. It does not apply to an appeal based only on the clerk's transcript, the judgment roll, or an appendix, where the appellant fails to

provide a reporter's transcript of the oral proceedings. In such cases, the evidence is conclusively presumed to support the judgment. (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521-522 [2d Dist.].)

B. Rationales:

1. The appellate court will defer to the trial court because the lower court was better positioned to assess witness credibility. (*Hurtado v. Statewide Home Loan Co.* (1985) 167 Cal.App.3d 1019, 1024-1025 [4th Dist.]; disapproved on other grounds in *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479.)
2. Deference to trial court's resolution of fact is warranted by jurisdictional considerations and the distinctive roles of trial and appellate courts. (*Tupman v. Haberkern* (1929) 208 Cal. 256, 262-263.)

C. Definitions:

1. It must be of ponderable legal significance, reasonable in nature, credible, and of solid value. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)
2. The appellate court focuses on quality, not quantity, of evidence. (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [2d Dist.].) Testimony of a single witness may suffice. (*In re Marriage of Birnbaum* (1989) 211 Cal.App.3d 1508, 1513 [1st Dist.].)

D. Uncontradicted Testimony in Appellant's Favor:

1. Uncontradicted testimony in appellant's favor does not necessarily conclusively establish the pertinent factual matter; court may affirm so long as the trial court's rejection of the evidence was not arbitrary. (*Krause v. Apodaca* (1960) 186 Cal.App.2d 413, 417 [2d Dist.].)
2. However, uncontradicted expert testimony on a matter solely within the knowledge of experts is conclusive and cannot be disregarded. (*Huber, Hunt & Nichols, Inc. v. Moore* (1977) 67 Cal.App.3d 278, 313 [5th Dist.].)

E. Interaction with “Conflicting Evidence” Rule:

1. The appellate court will resolve all evidentiary conflicts in favor of respondent and will affirm so long as the evidence favoring the respondent is sufficient to support the judgment. The appellate court will not reweigh the evidence. (*Lubetzky v. Friedman* (1991) 228 Cal.App.3d 35, 39 [2d Dist.].)
2. However, the court will reweigh the evidence in determining whether a trial court error was prejudicial or harmless, such as where there was an error in a close case. (*Downing v. Barrett Mobile Home Transport, Inc.* (1974) 38 Cal.App.3d 519, 525 [4th Dist.].)

F. Interaction with “Conflicting Inference” Rule:

1. If two or more factual inferences can reasonably be deduced from a set of facts, the appellate court must indulge all inferences in support of the party who prevailed in the proceedings below. (*Bowers v. Bernards, supra*, 150 Cal.App.3d at p. 874.)
2. However, a court will not indulge in inferences that were rebutted by clear, positive, and uncontradicted evidence. (*Fullerton Union High School Dist. v. Riles* (1983) 139 Cal.App.3d 369, 383 [4th Dist.].)

G. Interaction with Burden of Proof at Trial:

1. Ordinarily in civil cases, the substantial evidence standard of review applies without regard to the standard of proof applicable at trial. (*Rubin v. Los Angeles Fed. Sav. & Loan Assn.* (1984) 159 Cal.App.3d 292, 298 [4th Dist.].) In effect, the burden of proof normally “drops out” of the appellate court’s review of the record.
2. In criminal law cases, when reviewing the sufficiency of the evidence, the appellate court “must review the whole record in the light most favorable to [respondent] to determine whether it discloses substantial evidence ... such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson, supra*, 26 Cal.3d 557, 578.)
 - a. Nevertheless, in criminal cases, as in civil cases, if the evidence conflicts, so long as the evidence supporting the verdict is not discredited or inherently incredible, the

appellate court will not reweigh the evidence. (*People v. Gunn* (1959) 170 Cal.App.2d 234, 238.)

H. Application to Interpretations of Writings:

1. No extrinsic evidence introduced: The appellate court is not bound by the trial court's ruling if extrinsic evidence was not presented in the court below; instead, de novo review is applied. (*Davies Machinery Co. v. Pine Mountain Club, Inc.* (1974) 39 Cal.App.3d 18, 23 [5th Dist.].)
2. Non-conflicting extrinsic evidence introduced: De novo review applies where the parties presented non-conflicting extrinsic evidence. (*Stevenson v. Oceanic Bank* (1990) 223 Cal.App.3d 306 [1st Dist.].) De novo review applies even where conflicting inferences arise from uncontroverted extrinsic evidence. (*Medical Operations Management, Inc. v. National Health Laboratories, Inc.* (1986) 176 Cal.App.3d 886 [4th Dist.].)

I. Specific Examples:

1. General Civil:
 - a. Motion for judgment in non-jury trial, under Code of Civil Procedure, section 631.8. (*Rodriguez v. North American Rockwell Corp.* (1972) 28 Cal.App.3d 441, 446-447 [2d Dist.].)
 - b. Amount of compensatory damages awarded. The court may overturn the award as excessive only if it is so large that it shocks the conscience and suggests passion, prejudice, or corruption on the part of the jury. (*Fagerquist v. Western Sun Aviation, Inc.* (1987) 191 Cal.App.3d 709, 727 [4th Dist.].)
 - c. Propriety of punitive damages. (*Patrick v. Maryland Casualty Co.* (1990) 217 Cal.App.3d 1566, 1576 [1st Dist.].)
 - d. Amount of punitive damage awarded. Here, appellate courts use the identical "passion and prejudice" standard as with compensatory damage awards. (*Dumas v. Stocker* (1989) 213 Cal.App.3d 1262, 1266 [4th Dist.].)

- e. General verdict on multiple causes of action. The court will affirm so long as judgment is supported by substantial evidence on any one cause of action. (*Henderson v. Harnischfeger Corp.* (1974) 12 Cal.3d 663, 673.) (However, the court must reverse the verdict if the jury was given two instructions on the same issue, one correct and one incorrect. *Id.*)

2. Criminal:

- a. *Wheeler* motion (where trial court must decide whether peremptory jury challenges were based on group bias). (*People v. Jackson* (1992) 10 Cal.App.4th 13 [4th Dist.].)
- b. Elements of the crime. (*People v. Perez* (1992) 2 Cal.4th 1117.)
- c. The determination of whether the defendant was subjected to custodial interrogation. (*People v. Mickey, supra*, 54 Cal.3d at p. 649; also, whether the defendant voluntarily initiated further dialogue relating to an investigation after invoking right to counsel. *Id.*)

3. Family Law:

- a. Child dependency proceedings. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113 [3d Dist.].)
- b. Proceedings to free a minor from parental custody and control. (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 319-321 [2d Dist.].) (Where parents are indigent, then appellate court conducts *Wende* review. *Infra.*)
- c. Community property characterization. (*In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 279 [2d Dist.].)
- d. Default judgment that terminates parental rights. (Usually, the sufficiency of the evidence in default judgments is not reviewable. (*Corona v. Lundigan* (1984) 158 Cal.App.3d 764, 767 [2d Dist.]; *In re Matthew S., supra*, 201 Cal.App.3d 315 [2d Dist.].)

J. Overlap of Substantial Evidence and Abuse of Discretion Standards:

1. Different standards of review may apply to different issues under review.
2. For example, the trial court's discretion to order a preliminary injunction will be upheld if its factual determinations are supported by substantial evidence. (*West v. Lind* (1960) 186 Cal.App.2d 563 [1st Dist.].)
3. Similarly, a trial court abuses its discretion to order a new trial for juror misconduct if no substantial evidence supports its finding of bias. (*Johns v. City of Los Angeles* (1978) 78 Cal.App.3d 983, 990 [2d Dist.].)

K. Overlap of Substantial Evidence and Independent Judgment Standards: Presumptions in Favor of Appellant on Review of Certain Case-dispositive Rulings:

1. In ruling on demurrers and certain case-dispositive motions, the trial court must construe the matter before it in the light most favorable to the party opposing the motion. The trial court may only grant the motion if, in that light, the party opposing the motion cannot prevail on the merits as a matter of law.
 - a. Common examples include demurrers, motions for summary judgment, directed verdicts, and judgments notwithstanding the verdict.
2. In reviewing a trial court's ruling made under such circumstances, the appellate court must reverse the normal evidentiary presumption in favor of respondent. Instead, the appellate court views the evidence in the light most favorable to the appellant. Under that light, the appellate court—like the trial court before it—must independently determine whether there are sufficiently well-pleaded facts or admissible evidence that would support a finding for appellant. If so, then respondent is not entitled to judgment as a matter of law, and the appellate court will reverse.
3. Examples:
 - a. Dismissal after order sustaining a demurrer with leave to amend: reversible error if facts were alleged showing

entitlement to relief under any possible legal theory. (*Platt v. Coldwell Banker Residential Real Estate Services* (1990) 217 Cal.App.3d 1439, 1444 [4th Dist.].)

- b. Judgment on the pleadings. (*Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 99 [3d Dist.].)
- c. Directed verdict (the appellate court may affirm only when, disregarding all questions of credibility and all unfavorable evidence, and indulging all rational inferences to help appellant, there is still a total lack of substantial evidence to support a verdict in appellant's favor). (*Estate of Fossa* (1962) 210 Cal.App.2d 464, 466.)
- d. Nonsuit. (*Raber v. Tumin* (1951) 36 Cal.2d 654, 656.)
- e. Judgment notwithstanding the verdict: If substantial evidence supports the jury's verdict, then the respondent is not entitled to judgment as a matter of law. (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 546, disapproved on other grounds in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548.)

III. Abuse of Discretion

A. Introduction:

- 1. Courts will disturb discretionary trial court rulings only upon a showing of clear abuse of discretion; i.e., if the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)
- 2. This standard entails considerable deference to the trial court's decision. (*Department of Parks & Recreation v. State Personnel Bd.*, supra, 233 Cal.App.3d 813, 831 [3d Dist.].) Discretion is abused only when, in its exercise, the trial court exceeds the bounds of reason, taking into account all of the circumstances before it. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, quoting *Loomis v. Loomis* (1960) 181 Cal.App.2d 345, 348-349 [2d Dist.].)

3. If, however, the trial court fails to exercise its discretion at all, the appellate court will reverse and remand for the required exercise of discretion. (*Gardner v. Superior Court* (1986) 182 Cal.App.3d 335 [4th Dist..])

B. Specific Examples: The variety of discretionary trial court rulings subject to this standard is enormous. (*Hurtado v. Statewide Home Loan Co.*, *supra*, 167 Cal.App.3d at p. 1023 [4th Dist..])

1. General Civil:
 - a. Dismissal for lack of prosecution under Code of Civil Procedure, section 581(a). (*Woodruff v. McDonald's Restaurants* (1977) 75 Cal.App.3d 655 [1st Dist..])
 - b. Grant of new trial. (*Johns v. City of Los Angeles*, *supra*, 78 Cal.App.3d 983.) (In contrast, appellate courts independently review denials of new trial. *Infra*.)
 - c. Continuance refused. Whether prejudice to appellant was evidence at the time of the ruling (see *infra* review under prejudicial or harmless error). (*Cohen v. Herbert* (1960) 186 Cal.App.2d 488 [2d Dist..])
 - d. Injunctions and preliminary injunctions. (*Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1094 [1st Dist..])
 - e. Award of sanctions under Code of Civil Procedure, section 128.5 (frivolous actions or delaying tactics). (*Tenderloin Housing Clinic, Inc. v. Sparks* (1992) 8 Cal.App.4th 299 [1st Dist..])
 - f. Whether a class should be certified for a class action lawsuit. (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326-327.)
 - g. Failure to grant leave to amend when it was reasonably possible defect could be cured (may present pure questions of law subject to independent review). (*Larwin-Southern California, Inc. v. JGB Investment Co.* (1979) 101 Cal.App.3d 626 [4th Dist..])

h. Vacating judgments or orders under Code of Civil Procedure, section 473 (for mistake, inadvertence, surprise, or excusable neglect; or in equity for extrinsic mistake or fraud). (*Schrader v. Scott* (1992) 8 Cal.App.4th 1679, 1683 [4th Dist.].)

(1) However, this standard does not apply to motions under Code of Civil Procedure, section 473, for relief from default based on an attorney's affidavit of fault; the default must be set aside under such circumstances. (See Code Civ. Proc. § 473.)

2. Criminal:

- a. Non-indigent's right to counsel of choice. (*People v. Ortiz* (1990) 51 Cal.3d 975, 983-984.)
- b. Insufficient showing of indigency in order for public defender to represent petitioner. (*Hernandez v. Superior Court* (1992) 9 Cal.App.4th 1183 [2d Dist.].)

3. Family Law:

- a. Division of marital property. (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 592.)
- b. Spousal support. (*In re Marriage of Baker* (1992) 3 Cal.App.4th 491.)
- c. Child support: trial court's limited discretion to depart from Civil Code, section 4721 guidelines. (See Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group), ch. 6.)
- d. Child custody orders. (*Sanchez v. Sanchez* (1961) 55 Cal.2d 118.)
- e. Child visitation schedule. (*Fay v. Fay* (1938) 12 Cal.2d 279, 283.)
- f. Failure to make affirmative showing that child involved in custody dispute did not need independent counsel. (*In re Richard E.* (1978) 21 Cal.3d 349.)

IV. Independent Review (De Novo)

A. Introduction:

1. De novo review involves the appellate court's independent determination of the construction and effects of the matters presented to the trial court as a matter of law. This is a non-deferential standard. (*People v. Louis* (1986) 42 Cal.3d 969.) The trial court's determination of the issues is immaterial. (*Estate of Coate* (1979) 98 Cal.App.3d 982, 986 [1st Dist.].)
2. In contrast to the "substantial evidence" standard generally used to review resolution of factual issues, the "independent review" standard applies to the trial court's resolution of legal questions. Ultimately, however, "sufficiency of the evidence" itself presents a question of law appropriate for the appellate court's independent judgment.

B. Rationales:

1. The appellate court is well suited to decide questions of law because of appellate collegiality and plurality and opportunity for more thoughtful debate on appeal. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1415 [1st Dist.].)
2. The appellate court needs to promote uniformity of decisions. (*Hurtado v. Statewide Home Loan Co.*, *supra*, 167 Cal.App.3d 1019 [4th Dist.].)

C. Specific Examples:

1. General Civil:
 - a. Interpretation of a statute. (*Olson v. Cory* (1983) 35 Cal.3d 390, 402.)
 - b. The existence of a duty of care. (*Scott v. Chevron U.S.A.* (1992) 5 Cal.App.4th 510, 515 [1st Dist.].)

- c. Application of statutory standard of behavior to undisputed facts. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 218.)
- d. Application of law to undisputed facts. When the facts are uncontroverted and reasonably susceptible to only one deduction or inference. (*Fagerquist v. Western Sun Aviation, Inc.*, *supra*, 191 Cal.App.3d 709, 719 [4th Dist.].)
- e. Preliminary injunction where the underlying suit challenges the facial validity of legislation or a regulation (court can independently determine the validity question). (*Hunter v. City of Whittier* (1989) 209 Cal.App.3d 588, 595-596 [2d Dist.].)
- f. The grant and denial of summary judgment motions. (*Merrill v. Navegar* (2001) 26 Cal.4th 465, 476.)
- g. Denial of a new trial. (*Young v. Brunicardi* (1986) 187 Cal.App.3d 1344, 1348 [1st Dist.].) In contrast, abuse of discretion is the standard of review for granting of new trial.

2. Criminal Law:

- a. If the underlying facts are undisputed, then only a question of law remains. (*People v. Schoenfeld* (1980) 111 Cal.App.3d 671.)
- b. Mixed questions of law and fact require an appellate court to exercise its independent judgment. (*People v. Louis*, *supra*, 42 Cal.3d 969 [prosecutor's due diligence in obtaining witness's attendance].)
- c. Voluntariness of a confession, including the presence of coercive state activity and the existence of causality. (*People v. Mickey*, *supra*, 54 Cal.3d 612, 649.)
- d. Validity of a waiver of *Miranda* rights. (*People v. Marshall* (1990) 50 Cal.3d 907, 925.)
- e. Denial of a change in venue to avoid pretrial publicity. (*People v. Harris* (1981) 28 Cal.3d 935, 948.)

- f. Denial of a new trial despite allegations of prejudicial juror misconduct. (*People v. Cumpian* (1991) 1 Cal.App.4th 307, 311-312 [4th Dist.]; same standard governs civil trials.)

D. Application to Interpretations of Writings:

1. The appellate court independently reviews the decision whether to admit parol evidence, i.e., whether the contract language is ambiguous. (*Winet v. Price* (1992) 4 Cal.App.4th 1159 [4th Dist.].)
2. Similarly, if parol evidence is admitted and is not contradictory, the appellate court independently determines the contract's meaning. (*Winet v. Price, supra*, 4 Cal.App.4th 1159 [4th Dist.].)
3. Appellate courts review de novo whether a contract is fully integrated. (*Mattal v. American Trust Co.* (1962) 208 Cal.App.2d 645 [1st Dist.].)

V. Special Circumstances: Administrative Decisions under Code of Civil Procedure, Section 1094.5 (Administrative Mandamus):

- A. Pure questions of law raised in both adjudicative and legislative actions: An appellate court always reviews de novo pure legal issues. (*Imperial Irrigation Dist. v. State Wat. Resources Control Bd.* (1990) 225 Cal.App.3d 548, 553.)
 1. While the trial court's decision does not bind the appellate court, both courts will often only set aside the *agency's* determination if the agency's decision was arbitrary, capricious, contrary to public policy, unlawful, or procedurally unfair. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11.)
- B. As for all other questions, when reviewing administrative adjudications, the appellate court applies a substantial evidence standard. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143-144.)
 1. If the *trial court* exercised its independent judgment (because the administrative agency's decision affected a person's "fundamental vested right"), then the appellate court looks to see whether, on the record before the *trial court*, substantial evidence supports the court's decision. (*Bixby v. Pierno, supra*, 4 Cal.3d at p. 143.)

2. If the *trial court* applied the substantial evidence test to review the propriety of the administrative agency's decision (i.e., no fundamental vested right involved), then, the *appellate court* does the same thing: It looks to see whether, on the record before the *administrative agency*, substantial evidence supports its decision. (*Zuniga v. San Mateo Dept. of Health Services* (1990) 218 Cal.App.3d 1521, 1530.)

VI. Reversible Error

A. Presumptions in Favor of Correctness:

1. The appellate court will presume that the trial court decided correctly the matters before it. The appellant bears the burden of affirmatively showing error on an adequate record. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)
2. Where the record is silent, the appellate court will indulge all "intendments and presumptions" in favor of the judgment. (See *Denham v. Superior Court, supra*, 2 Cal.3d 557, 564.) If, however, the trial court expressly refuses to make certain findings, the appellate court will not presume their existence to support a judgment. (*Reid v. Moskovitz* (1989) 208 Cal.App.3d 29, 32.)
3. Limitation on presumptions: Under Rule 52, California Rules of Court, in an appeal on a partial appellate record that includes a reporter's transcript, the appellate court will not presume that the omitted portions of the record would have demonstrated the judgment's correctness. If, however, the appeal is on the judgment roll, clerk's transcript, or appendix, and thus does not contain a reporter's transcript, Rule 52 does not apply unless the claimed error appears on the record's face. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 153-154; *Stauffacher v. Stauffacher* (1964) 227 Cal.App.2d 735, 737.)

B. Harmless or Trivial Error:

1. Sources of law:
 - a. California Constitution, Article VI, section 13, prohibits an appellate court from reversing unless, in light of the whole

record, any error that occurred “resulted in a miscarriage of justice.”

- b. Similar limitations appear in Code of Civil Procedure, section 475, Evidence Code, sections 353 and 354, and Penal Code, sections 1258 and 1404.
2. Effect: Except in limited circumstances where error is “reversible error *per se*,” appellate courts do not presume that any error that occurred was prejudicial.
3. Labels: Trivial, minor, insubstantial errors will not justify reversal.
4. Moreover, error “cured” by a subsequent development will also not justify reversal.
5. Test: Except for “reversible error *per se*,” whether error is “harmless” or “prejudicial” cannot normally be determined in the abstract; rather, the determination necessarily proceeds case by case, in consideration of the particular record before the appellate court. (See *Alarid v. Vanier* (1958) 50 Cal.2d 617, 625.)

C. Reversible Error *Per Se*:

1. In certain limited circumstances, an appellate court must presume prejudice resulted from a particular error. In these cases, once error occurs, reversal follows as a matter of course.
2. Denial of right to a fair hearing.
 - a. Right to jury trial on jury triable issues. (*Di Donato v. Santini* (1991) 232 Cal.App.3d 721 [2d Dist.].)
 - b. Right to trial by an impartial jury drawn from a representative cross-section of the community through discriminatory exclusion of potential jurors. (*Selby Constructors v. McCarthy* (1979) 91 Cal.App.3d 517, 527 [2d Dist.].)
 - c. Right to present evidence. (*National Auto. Ins. Co. v. Fraties* (1941) 46 Cal.App.2d 431, 434.)

- d. Right to cross-examine witnesses. (*Fremont Indemnity Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [2d Dist.].)
- e. Erroneous sustaining of demurrer without leave to amend. (*Deeter v. Angus* (1986) 179 Cal.App.3d 241, 251 [1st Dist.].)
- f. Representation by counsel with conflict of interest.
 - (1) *Hammett v. McIntyre* (1952) 114 Cal.App.2d 148, 158.
 - (2) Court will only reverse if the erroneous ruling affected the outcome of the proceeding to the prejudice of the complaining party. (*In re Sophia B.* (1988) 203 Cal.App.3d 1436, 1439 [4th Dist.].)
- g. In a non-jury trial, trial court's failure to render requested statement of decision (Civ. Code, § 632). (*Social Service Union v. County of Monterey* (1989) 208 Cal.App.3d 676, 681 [6th Dist.].)
- h. Failure to apply mandatory statutes. Example: An order granting a new trial on non-statutory grounds is in excess of the trial court's jurisdiction. (*Chevalier v. Dubin* (1980) 104 Cal.App.3d 975 [2d Dist.].)
- i. Judgment not supported by substantial evidence. (*In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258 [1st Dist.].)
- j. Absence of written specifications of grounds for Civil Code, section 128.5 sanctions (bad faith/frivolous actions or tactics). (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 705-706 [4th Dist.].)
- k. Order granting new trial where the exact statutory procedures, in conformity with the prescribed time limits, are not followed. (*Maple v. Cincinnati, Inc.* (1985) 163 Cal.App.3d 387, 391 [2d Dist.].)

D. Reversible Error Probability of More Favorable Judgment?

- 1. In most circumstances, in determining whether error was "prejudicial," the courts simply ask: Is it reasonably probable that a

result more favorable to appellant would have occurred absent the error? (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1099.)

2. This same standard applies in both civil and criminal cases, unless the error in a criminal case involves denial of a federal constitutional right. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.)
3. In some instances, even nontrivial error will not require reversal if the record demonstrates that the judgment is the only one that could have been reached. (See, e.g., *County of Monterey v. W. W. Leasing Unlimited* (1980) 109 Cal.App.3d 636, 642; *American Federation of State Etc. Employees v. County of Los Angeles* (1983) 146 Cal.App.3d 879, 887.)
4. Occasionally, multiple inconsequential errors, considered cumulatively, prejudiced appellant. (*Delzell v. Day* (1950) 36 Cal.2d 349, 351.)

E. Reversible Error: Harmless Beyond a Reasonable Doubt?

1. In criminal appeals concerning federal constitutional error, unless the error was harmless beyond a reasonable doubt, the appellate court must reverse. (*Chapman v. California* (1967) 386 U.S. 18, 24.)
2. In limited circumstances, the same standard may apply in civil cases involving federal constitutional rights. (See *In re Krall* (1984) 151 Cal.App.3d 792, 796 [civil commitment].)